

G307TRUP

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

14 Cr. 652 (PGG) (AJP)

6 LUIS TRUJILLO,

7 Defendant.  
8 -----x  
9

New York, N.Y.  
March 24, 2016  
11:15 a.m.

10 Before:

11 HON. ANDREW J. PECK  
12 Magistrate Judge

13 APPEARANCES

14 PREET BHARARA  
15 United States Attorney for the  
Southern District of New York  
16 BY: JUSTINE GERACI  
17 Assistant United States Attorney

18 JENNIFER BROWN  
19 Attorney for Defendant

20 ALSO PRESENT: STEVEN BERGER, NYPD

21 (Case called)

22 (In open court)

23 THE COURT: Be seated.

24 MS. GERACI: Good morning, your Honor. Justine Geraci  
25 for the government. I'm joined at counsel table by Detective

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1 Steven Berger, with the New York City Police Department Cold  
2 Case Squad.

3 MS. BROWN: Good morning, your Honor. Jennifer Brown  
4 on behalf of Mr. Trujillo.

5 THE COURT: All right. Mr. Trujillo, please stand.

6 Is this your signature on the consent to proceed form?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Before you signed it, did Ms. Brown  
9 explain to you that you have the right to have your plea heard  
10 by Judge Gardephe but that if you consented -- as it appears  
11 you have -- I can hear your plea, and I will make a  
12 recommendation to Judge Gardephe?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And you have agreed to that? I saw your  
15 head nod; I'm not sure I heard the answer. Was that a yes?

16 THE DEFENDANT: Yes.

17 THE COURT: Thank you. Please raise your right hand.

18 (Defendant sworn)

19 THE COURT: All right. Put your hand down, remain  
20 standing. State your full name for the court reporter's  
21 transcript.

22 THE DEFENDANT: My name is Luis Julian Trujillo.

23 THE COURT: Are you a United States citizen, sir?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: What is the last grade of schooling that

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1 you completed?

2 THE DEFENDANT: 12th grade.

3 THE COURT: And have you got a high school degree?

4 THE DEFENDANT: No.

5 THE COURT: But you got to the 12th grade.

6 THE DEFENDANT: Yes.

7 THE COURT: Are you recently or currently under the  
8 care of a doctor, a psychiatrist or any other medical or mental  
9 health professional?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Have you ever been treated for drug  
12 addiction or alcohol addiction?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Have you taken any drugs or medicine  
15 yesterday or today, even anything as simple as an aspirin?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Do you feel physically and mentally all  
18 right and able and willing to proceed in court today?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Are you having any difficulty seeing or  
21 hearing or understanding what I'm saying to you?

22 THE DEFENDANT: No, not at all, your Honor.

23 THE COURT: Promise me now that if at any point today  
24 you don't understand what I'm asking you or what I'm telling  
25 you, you won't guess or try to fake your way through it; you

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1 will feel comfortable asking me to be louder, or clearer, or  
2 both as necessary. OK?

3 THE DEFENDANT: I promise.

4 THE COURT: All right, very good.

5 We need to take your waiver of indictment with respect  
6 to the S2 superseding information. Please answer the clerk's  
7 questions.

8 DEPUTY COURT CLERK: You are Luis Trujillo.

9 THE DEFENDANT: Yes, sir.

10 DEPUTY COURT CLERK: Have you signed this waiver of  
11 indictment?

12 THE DEFENDANT: Yes, sir.

13 DEPUTY COURT CLERK: Before you signed it, did you  
14 discuss it with your attorney?

15 THE DEFENDANT: Yes, sir.

16 DEPUTY COURT CLERK: Did your attorney explain it to  
17 you?

18 THE DEFENDANT: Yes, sir.

19 DEPUTY COURT CLERK: Do you understand what you are  
20 doing?

21 THE DEFENDANT: Yes, sir.

22 DEPUTY COURT CLERK: Do you understand you are under  
23 no obligation to waive indictment?

24 THE DEFENDANT: Yes, sir.

25 DEPUTY COURT CLERK: Do you understand if you do not

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1 waive indictment, if the government wants to prosecute you,  
2 they will have to present this case to a grand jury which may  
3 or may not indict you?

4 THE DEFENDANT: Yes, sir.

5 DEPUTY COURT CLERK: You understand by signing this  
6 waiver of indictment, you have given up your right to have your  
7 case presented to a grand jury?

8 THE DEFENDANT: Yes.

9 DEPUTY COURT CLERK: Do you understand what a grand  
10 jury is?

11 THE DEFENDANT: Yes.

12 DEPUTY COURT CLERK: Have you received a copy of the  
13 information?

14 THE DEFENDANT: Yes.

15 DEPUTY COURT CLERK: Do you waive its public reading?

16 THE DEFENDANT: Yes.

17 THE COURT: For the record, you have seen the S2  
18 information, correct?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. Have you discussed that with  
21 Ms. Brown and talked about how you might wish to plead?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And are you satisfied with the  
24 representation that she has given and is providing to you?

25 THE DEFENDANT: Yes, your Honor.

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1                   THE COURT: All right. At this point what is your  
2 plea?

3                   THE DEFENDANT: Guilty.

4                   THE COURT: All right. I'm going to ask you some  
5 questions to make sure you understand the charges you are  
6 facing and some of the consequences of pleading guilty, and at  
7 the end of that I will ask you if you still wish to plead  
8 guilty or not.

9                   Do you understand you are charged in Count One with  
10 agreeing with others to distribute and possess with intent to  
11 distribute mixtures containing cocaine?

12                  THE DEFENDANT: Yes, your Honor.

13                  THE COURT: And do you understand that that carries a  
14 maximum of 20 years' imprisonment; a maximum of lifetime  
15 supervised release and a mandatory minimum of three years'  
16 supervised release; maximum fine of a million dollars, or twice  
17 the gross gain or loss from your offense; a \$100 mandatory  
18 special assessment; and court ordered restitution?

19                  THE DEFENDANT: Yes, your Honor.

20                  THE COURT: And do you know that you have the right to  
21 plead not guilty and the right to a public jury trial on these  
22 charges?

23                  THE DEFENDANT: Yes, your Honor.

24                  THE COURT: Do you understand that if you were to  
25 plead not guilty and go to trial, you would be presumed

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1 innocent unless and until the prosecutors proved your guilt by  
2 the standard of beyond a reasonable doubt?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At a trial, you have the right to be  
5 represented by counsel at all times and at all stages leading  
6 up to the trial and, if necessary, Ms. Brown or another  
7 attorney will be appointed for you free of charge. Do you  
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that you have the right  
11 at a trial, yourself and through your attorney, to confront and  
12 question anyone who testifies against you, and you also have  
13 the right to call witnesses to testify for you, and, if  
14 necessary, the court would subpoena them to get them to trial?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that no one could force  
17 you to incriminate yourself at the trial, meaning no one could  
18 force you to testify if you didn't want to; but, on the other  
19 hand, if after getting Ms. Brown's legal advice you wanted to  
20 testify, you would have the absolute right to do so?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And do you understand that if you do  
23 continue to plead guilty today, that means there will be no  
24 trial of any kind; so you're giving up your right to a public  
25 jury trial and waiving any defenses you may have and any claims

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1 that your constitutional rights may have been violated?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you talked with Ms. Brown? Has she  
4 explained to you how the U.S. Sentencing Commission guidelines  
5 and the additional sentencing factors in Title 18 U.S. Code,  
6 Section 3553 may apply to your case?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that Judge Gardephe is  
9 obligated to calculate the applicable sentencing guideline  
10 range, to consider that range, to consider any departures under  
11 the guidelines and to consider all the sentencing factors in  
12 Section 3553?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Among the factors that the court will take  
15 into account in sentencing you are the conduct you engaged in,  
16 the victim of the offense, your role in the offense, whether  
17 you have accepted responsibility for your acts, whether you  
18 have any other criminal history, and whether you have  
19 obstructed justice in any way. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Between now and the date of sentencing,  
22 the probation department will conduct an investigation and  
23 prepare a presentence report. You and Ms. Brown will get  
24 copies of that, as will the prosecutors and Judge Gardephe. If  
25 you or Ms. Brown on the one hand or the prosecutors on the

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1 other believe anything in the presentence report is incorrect  
2 or inaccurate, each side can file objections with the court.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that Judge Gardephe  
6 won't be able to determine what sentencing guidelines or other  
7 3553 sentencing factors apply to you until that report is  
8 prepared and any objections filed and ruled on?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: As the term sentencing guidelines implies,  
11 and as the Supreme Court has made clear, they're guideline and  
12 not mandatory, and so Judge Gardephe can give you a sentence  
13 within the guideline range, less than the guideline range or  
14 greater than the guideline range, but of course not greater  
15 than the statutory maximum. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that under some  
18 circumstances, subject to the limitations in your plea  
19 agreement letter -- that we will get to in a minute -- that you  
20 and/or the government may have the right to appeal from any  
21 sentence you get?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: I don't know what sentence you are hoping  
24 for or wishing for as you stand here today, but do you  
25 understand that even if Judge Gardephe gives you a sentence

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1 more severe than that, you will still be bound by your guilty  
2 plea and not allowed to withdraw it?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: In the federal system parole has been  
5 abolished, so if you are sentenced to prison, you will not be  
6 released early on parole. Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And do you understand that if you are  
9 sentenced to a term of supervised release and violate any of  
10 the conditions of that release, you face additional punishment,  
11 including additional imprisonment up to the maximum allowed by  
12 law?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: I'm not sure if I asked you this before,  
15 and if so, I have forgotten the answer, or I skipped it, but  
16 are you a United States citizen, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Good. Do you understand that in addition  
19 to the criminal law consequences we have been talking about,  
20 there are civil consequences to a felony conviction, such as  
21 the loss of voting rights, loss of opportunity to hold certain  
22 jobs or licenses, etc.?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And do you understand finally that the  
25 answers you have been and will give me today can be used

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1 against you in a prosecution for perjury or false statements if  
2 you're not telling me the truth?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Trujillo, has anyone made any threats  
5 to you, or anybody else, to convince or influence you to plead  
6 guilty?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: All right. I have been handed a copy of  
9 your plea agreement letter dated February 3 on the first page  
10 and signed by you and Ms. Brown on the sixth and final page,  
11 today, March 24. Other than what is contained in the plea  
12 agreement, has anyone made any promises to you or anybody else  
13 to convince or influence you to plead guilty?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: In particular -- and this is going to  
16 sound redundant -- it is, but I have to ask you -- has anyone  
17 made any promise to you as to the specific sentence you are  
18 going to get from Judge Gardephe?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Is this your signature on the last page of  
21 the plea letter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And before you signed it, did Ms. Brown go  
24 through it with you and explain it all to you?

25 THE DEFENDANT: Yes, your Honor.

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1                   THE COURT: All right. I'm going to ask you a few  
2 questions about the plea letter. Even if I don't cover  
3 something, you are still going to be bound by it as long as you  
4 continue to plead guilty.

5                   Do you understand that you have agreed to make certain  
6 allocutions during your guilty plea with respect to  
7 codefendants and use of a gun, etc.? And we will hear more  
8 from you on that when I get to your allocution.

9                   THE DEFENDANT: Yes, sir.

10                  THE COURT: And do you understand that you have agreed  
11 to waive the statute of limitations with respect to Count One?

12                  THE DEFENDANT: Yes, your Honor.

13                  THE COURT: And do you also understand that you are  
14 admitting to the forfeiture allegation with respect to Count  
15 One, meaning certain property or money or both will be  
16 forfeited to the government?

17                  THE DEFENDANT: Yes, your Honor.

18                  THE COURT: And do you understand that you have  
19 stipulated and agreed with the prosecutors to a sentencing  
20 guideline of 240 months' imprisonment?

21                  THE DEFENDANT: Yes, your Honor.

22                  THE COURT: And do you understand that you have agreed  
23 not to file a direct appeal or a collateral challenge,  
24 including challenges under 28 U.S. Code 2241 or 2255 from any  
25 sentence at or below that range of 240 months?

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1                   THE DEFENDANT: Yes, your Honor.

2                   THE COURT: And do you also understand that you have  
3 agreed not to seek to withdraw your plea or attack your  
4 conviction on direct appeal or collaterally on the ground that  
5 the government failed to produce discovery material, Jencks Act  
6 material, exculpatory material or impeachment material?

7                   THE DEFENDANT: Yes, your Honor.

8                   THE COURT: And there is a paragraph in here that if  
9 you are not a U.S. citizen -- although you are -- you would  
10 face deportation, which is presumptively mandatory, and you  
11 would not have the right to withdraw your plea based on any  
12 immigration consequences, even though it probably doesn't  
13 apply. You understand that.

14                  THE DEFENDANT: Yes, your Honor.

15                  THE COURT: Ms. Geraci, any additional questions you  
16 would suggest?

17                  MS. GERACI: No, your Honor.

18                  THE COURT: Now that we have gone through the plea  
19 agreement and some of the other rights you are giving up by  
20 pleading guilty, and some of the other consequences, do you  
21 still wish to plead guilty?

22                  THE DEFENDANT: Yes, your Honor.

23                  THE COURT: And are you doing so freely and  
24 voluntarily because you are guilty?

25                  THE DEFENDANT: Yes, your Honor.

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1                   THE COURT: Ms. Brown, have you discussed with Mr.  
2 Trujillo the consequences of pleading guilty?

3                   MS. BROWN: Yes, your Honor.

4                   THE COURT: And based on the discovery you have  
5 received from the prosecutors, your investigation and what you  
6 have learned from your client, is it your opinion that he is  
7 pleading guilty because he is guilty?

8                   MS. BROWN: Yes, your Honor.

9                   THE COURT: Please tell me in your own words, Mr.  
10 Trujillo, what it is you did to commit this crime.

11                  THE DEFENDANT: In 2002, I agreed with another person  
12 to assist with the distribution of cocaine. In August 2002, my  
13 sister's boyfriend Tito had a dispute with a guy named Andy  
14 over drug territory. On August 11, 2002, in the Bronx, I drove  
15 Tito and another person who I knew as Popeye while they  
16 searched for Andy. When we got to the area of Franklin Avenue  
17 and 169th Street, both Tito and Popeye shot Andy and killed  
18 him. I knew at the time what I was doing was wrong and  
19 illegal.

20                  THE COURT: All right. And the Andy you're referring  
21 to is Andrew Belkairen?

22                  THE DEFENDANT: Yes, your Honor.

23                  THE COURT: Any additional questions or any proffer  
24 from the prosecution, Ms. Geraci?

25                  MS. GERACI: No additional questions, but I'm happy to

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1 make a proffer. Your Honor, the government would show if this  
2 case went to trial the following three elements beyond a  
3 reasonable doubt as to Count One of the S2 information:

4 First, that two or more persons agreed or conspired to  
5 distribute or possess with the intent to distribute one or more  
6 controlled substances, specifically mixtures and substances  
7 containing a detectable amount of cocaine;

8 Second, that this defendant was a party to or a member  
9 of that agreement or conspiracy, and

10 Third, that this defendant joined the agreement or  
11 conspiracy knowing of its objective, which was to distribute or  
12 possess with the intent to distribute cocaine, and intended to  
13 join together with at least one other alleged conspirator to  
14 achieve that objective.

15 The government would further show venue by showing  
16 this crime occurred in the Bronx, New York.

17 Lastly, with respect to the allocution, concerning the  
18 death of Andrew Belkairin, the government would show that in  
19 connection with the cocaine distribution conspiracy in 2002  
20 that the defendant and his coconspirators had an ongoing  
21 dispute with the victim Andrew Belkairin, who the defendant  
22 refers to as Andy; that on or about August 11, 2002 the  
23 defendant drove his coconspirators who were armed with firearms  
24 to find Mr. Belkairin, and that they intended to shoot him to  
25 resolve this dispute. Finally, when they found him in the

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1 vicinity of Franklin Avenue and East 169th Street in the Bronx,  
2 the defendant's coconspirators discharged firearms at  
3 Mr. Belkairin, striking and killing him.

4 THE COURT: All right. And, Mr. Trujillo, just so we  
5 make sure the Is are dotted and Ts crossed, the agreement to  
6 distribute cocaine, you referred to you were in the Bronx when  
7 you were dealing with that.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. I'm satisfied that you  
10 understand the nature of the charges against you and the  
11 consequences of pleading guilty, and I'm also satisfied your  
12 plea is being made freely, voluntarily and knowingly, and that  
13 there is a factual basis for the plea. I therefore recommend  
14 to Judge Gardephe that he accept your plea of guilty to Count  
15 One of the information.

16 Has the date for sentencing been set, Ms. Geraci?

17 MS. GERACI: Your Honor, not by Judge Gardephe, but I  
18 have spoken with defense counsel and we would like a control  
19 date of July 11, 2016. I will call the Judge Gardephe's  
20 chambers and see if that's doable for them.

21 THE COURT: A control date of July 11 for your  
22 sentencing. Most likely that will change, and when it does  
23 Ms. Brown will be notified and she will tell you.

24 In the meantime I direct that a presentence report be  
25 prepared. I direct both the government and the defense to

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1 within the 14 day trigger period submit their information to  
2 the probation staff.

3 You will need to meet with the probation staff, Mr.  
4 Trujillo, and answer their questions, because that's a critical  
5 part of the sentencing phase of your case. You understand that  
6 and will cooperate, right?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Ms. Brown, do you wish the clerk to mark  
9 the file that any such interview only take place in the  
10 presence of yourself or one of your colleagues?

11 MS. BROWN: Yes, your Honor.

12 THE COURT: All right, that will be so marked.

13 Bail? It appears that Mr. Trujillo is out on bail; is  
14 that correct?

15 MS. GERACI: He is, your Honor, and the government is  
16 not making any motion at this time for remand. He has been  
17 completely compliant with his conditions.

18 THE COURT: All right. Bail continued as previously  
19 set. Any applications can be taken up with Judge Gardephe.

20 Obviously, Mr. Trujillo, if you get in any trouble  
21 between now and your sentencing date, that can't possibly help  
22 you at sentencing, so continue to be compliant with bail.

23 Anything else from either side?

24 MS. GERACI: Not from the government. Thank you, your  
25 Honor.

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1 MS. BROWN: No, your Honor.

2 THE COURT: I direct the U.S. attorney's office to  
3 obtain the transcript and to present it to Judge Gardephe along  
4 with any other paperwork he may require. With that we are  
5 adjourned on this matter.

6 (Adjourned)

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